



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

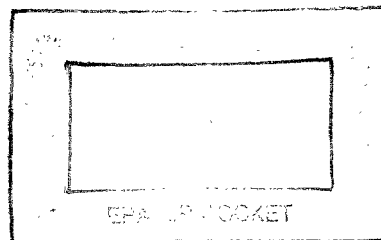
Jim Doyle, Governor
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File Ref: 4503

U.S. Environmental Protection Agency
EPA Docket Center
Air and Radiation Docket
ATTENTION: Public Docket No. OAR-2003-0046
Mail Code 6102T
1200 Pennsylvania Avenue, NW
Washington, DC 20460



To Whom It May Concern:

This letter is to express our concerns with the U.S. Environmental Protection Agency's (EPA's) Direct Final and Proposed Rules for the *Control of Emissions from New Nonroad Diesel Engines: Amendments to the Nonroad Engine Definition*, as published in the *Federal Register* on April 11, 2003 (68 FR 17741 and 68 FR 17763, respectively).

According to EPA, the purpose of this rulemaking is to revise the definition of nonroad engines to include certain diesel engines that would otherwise not meet the current definition. As described by EPA, this action is intended to apply to all

"diesel engines used in agricultural operations in the State of California that are certified by the engine manufacturer to meet the nonroad emission standards for that engine, where the engine is part of an engine family that contains engines that otherwise meet the definition of nonroad engine. Such engines would no longer be stationary internal combustion engines [without regard to whether these engines are portable or transportable or how long these engines remain in one fixed location at a farm]. Thus, farmers would not include the emissions from such nonroad engines when they determine whether their agricultural operation is a major source for purposes of Title V permitting or other requirements."

The Wisconsin Department of Natural Resources opposes this proposed action. Identifying stationary sources as mobile sources runs counter to the Clean Air Act and will unnecessarily create air quality issues beyond California, the rule's intended geographic scope.

Although USEPA proposes to apply the revised nonroad definition only in California, we remain troubled by the potential implications for other states, and question EPA's ability to contain this provision only to California. Previous actions by USEPA to create California-specific exemptions to statutory provisions of the Clean Air Act have ended up affecting the rest of the

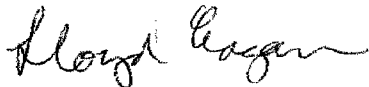
nation. In particular, the actions by USEPA to create a California-specific exemption to motor vehicle inspection and maintenance rules ended up setting back inspection and maintenance programs through out the nation.

Regulation of stationary sources is a responsibility of the states as delegated under Title V of the Clean Air Act. Any action that turns Title V sources into mobile sources invokes not only Federal Preemption and also severely limits the frequency and breadth of regulation. Large, stationary diesel engines pose particular public health threats. States may be best equipped to regulate these sources, especially with respect to toxic emissions such as diesel exhaust particulates.

Among the criteria that are cited by USEPA to create a California-specific classification for stationary diesel engines is the use of Carl Moyer funds from the State of California to encourage a buy-back program for older, dirtier diesel engines. This is an economic incentive program. All economic incentive programs used in a SIP should be reviewed with respect to the provisions in USEPA's Economic Incentive Guidance. This does not appear to have been done. The toxic issues inherent in stationary diesel engines should be addressed.

Wisconsin's Department of Natural Resources believes this action has the potential to affect other states in addition to California, as well as engines used in other operations in addition to agricultural. States and localities across the country had no knowledge of this pending action – let alone input into its development – prior to its publication in the *Federal Register* last month. We urge USEPA to withdraw the Direct Final Rule and consider a proposal that does not set such a poor precedent.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lloyd Eagan".

Lloyd Eagan,
Director, Bureau of Air Management